

REMARKS:

Claims 1-11, 34, and 35 are currently pending in the application.

Claims 1-11, 34, and 35 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-11, 34, and 35 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,397,221 to Greef, *et al.* ("*Greef*").

Although the Applicants believe Claims 1-11, 34, and 35 are directed to patentable subject matter without amendment, the Applicants has amended Claims 1-9, 9, 10, 34, and 35 to more particularly point out and distinctly claim the Applicants invention. By making these amendments, the Applicants make no admission concerning the merits of the Examiner's rejection, and respectfully reserves the right to address any statement or averment of the Examiner not specifically addressed in this response. Particularly, the Applicants expressly reserve the right to pursue broader claims in this Application or through a continuation patent application. No new matter has been added.

REJECTION UNDER 35 U.S.C. § 112:

Claims 1-11, 34, and 35 stand rejected under 35 U.S.C. § 112 as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regards as the invention.

The Examiner specifically states that "Claim 1, line 4, 'seller database' is not clear as the 'database' is later recited to comprise a plurality of seller databases from line 4." (28 April 2006 Office Action, Page 2). The Applicants respectfully disagree. The Examiner further states "Claim 1, lines 7, 9, and 11, 'a rule' is not clear as the 'rules' from line 3 now comprises a single rule in three different instances." (28 April 2006 Office Action, Page 2). The Applicants respectfully disagree. The Examiner still further states "Claim 1, last line, 'the rules' is not clear as to what is being referenced." (28 April 2006 Office Action, Page 3). The Applicants respectfully disagree. Nonetheless, the Applicants have amended Claims 1-7, 9, 10, 34, and 35 in an effort to expedite prosecution of this Application and to more particularly point out and distinctly claim the subject matter which

the Applicants regards as the invention. By making these amendments, the Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 112, as set forth in the Office Action.

The Applicants respectfully submit that Claims 1-11, 34, and 35 are considered to be in full compliance with the requirements of 35 U.S.C. § 112. Thus, the Applicants respectfully request that the rejection of Claims 1-11, 34, and 35 under 35 U.S.C. § 112 be reconsidered and that Claims 1-11, 34, and 35 be allowed.

REJECTION UNDER 35 U.S.C. § 103(a):

Claims 1-11, 34, and 35 stand rejected under 35 U.S.C. § 103(a) over *Greef*".

Although the Applicants believes Claims 1-11, 34, and 35 are directed to patentable subject matter without amendment, the Applicants has amended Claims 1-7, 9, 10, 34, and 35 to more particularly point out and distinctly claim the Applicants invention. By making this amendment, the Applicants do not indicate agreement with or acquiescence to the Examiner's position with respect to the rejections of these claims under 35 U.S.C. § 103(a), as set forth in the Office Action.

The Applicants respectfully submit that *Greef* or the Examiner's Official Notice, either individually or in combination, fails to disclose, teach, or suggest each and every element of Claims 1-11, 34, and 35. Thus, the Applicantss respectfully traverse the Examiner's obvious rejection of Claims 1-11, 34, and 35 under 35 U.S.C. § 103(a) over the proposed combination of *Greef* and the Examiner's Official Notice, either individually or in combination.

The Proposed *Greef-Official-Notice* Combination Fails to Disclose, Teach, or Suggest Various Limitations Recited in Applicants Claims

For example, with respect to amended independent Claim 1, this claim recites:

An electronic commerce system, comprising a content enhancement module operable to:

analyze product data stored in one or more seller databases using a set of rules, the one or more seller databases associated with one or more sellers, the ***set of rules comprising generic rules*** applying to substantially all of the one or more seller databases that store product data, the ***generic rules comprising***:

a first rule indicating that a potential error exists if two products in the one or more seller databases have identical product identifiers but have otherwise different product data;

a second rule indicating that a potential error exists if two products in the one or more seller databases have different product identifiers but have otherwise identical product data; and

a third rule indicating that a potential error exists if the values associated with particular generic product attributes have a non-numerical format; and

identify one or more potential errors in the product data according to the set of rules. (Emphasis Added).

Amended independent Claims 34 and 35 recite similar limitations. *Greef* or the Examiner's Official Notice fails to disclose each and every limitation of amended independent Claims 1, 34, and 35.

The Applicants respectfully submit that *Greef* has nothing to do with independent Claim 1 limitations regarding an ***“electronic commerce system, comprising a content enhancement module”*** and in particular *Greef* has nothing to do with independent Claim 1 limitations regarding a ***“content enhancement module”*** operable to ***“analyze product data stored in one or more seller databases using a set of rules***, the one or more seller databases associated with one or more sellers, the ***set of rules comprising generic rules*** applying to substantially all of the one or more seller databases that store product data”. It appears that the Examiner is equating the ***“set of rules”*** recited in amended independent Claim 1 with the association rules disclosed in *Greef*. (28 April 2006 Office Action, Page 3). However, the association rules disclosed in *Greef* merely provide for a process in which personal computers include a set of attributes, including the product attributes of CPU speed, Ram Size, Display Type and Hard Drive Size, ***and does not include or is not even related to the set of rules***, as recited in amended independent Claim 1. (Column 12, Lines 11-52). In contrast, ***“set of rules”*** recited in amended independent Claim 1 is provided in the ***“content enhancement module”*** which is operable to ***“analyze product data stored in one or more seller databases”*** wherein

“the **set of rules compris[es] generic rules** applying to substantially all of the one or more seller databases that store product data”. Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between *Greef* and amended independent Claim 1 cannot be made. The Applicants further respectfully submit that these distinctions alone are sufficient to patentably distinguish amended independent Claim 1 from *Greef*.

The Applicants respectfully submit that the Office Action acknowledges, and the Applicants agree, that *Greef* fails to disclose the emphasized limitations noted above in independent Claim 1. Specifically the Examiner acknowledges that *Greef* fails to disclose the term “content enhancement module”. (28 April 2006 Office Action, Page 3). However, the Examiner asserts that the Examiner’s Official Notice discloses the acknowledged shortcomings in *Greef*. The Applicants respectfully traverse the Examiner’s assertions regarding the Examiner’s Official Notice.

The Examiner’s Official Notice is improper under MPEP § 2144.03

The Applicants respectfully submit that the Applicants are confused as to what the Examiner purports to teach by the Official Notice or even the extent in which the Examiner is taking Official Notice. The Applicants respectfully request clarification as to the subject matter for which the Examiner is taking Official Notice. ***The Applicants respectfully traverse the Official Notice because the asserted facts, as best understood by the Applicants, are not supported by substantial documentary evidence or any type of documentary evidence and appear to be the Examiner’s opinions formulated using the subject Application as a template, which constitutes impermissible use of hindsight.*** Furthermore, under these circumstances, it is inappropriate for the Examiner to take Official Notice without documentary evidence to support the Examiner’s conclusion. (See MPEP § 2144.03). ***The Applicants respectfully request the Examiner to produce authority for the Examiner’s Official Notice.***

Only “in limited circumstances,” is it “appropriate for an examiner to take official notice of facts not in the record or to rely on common knowledge in making a rejection”.

(MPEP § 2144.03). “Official notice unsupported by documentary evidence ***should only be taken by the examiner*** where the facts asserted to be well-known, or to be common knowledge in the art are ***capable of instant and unquestionable demonstration as being well-known***. With respect to the subject Application, ***the Examiner’s statement*** that “Official Notice is taken that ***content enhancement modules have been common knowledge in the electronic commerce art***”, ***is not capable of instant and unquestionable demonstration as being well-known***” (28 April 2006 Office Action, Page 3). (Emphasis Added). As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be ‘***capable of such instant and unquestionable demonstration as to defy the dispute***’ (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 U.S.P.Q. 6 (C.C.P.A. 1961)).” (MPEP § 2144.03(A)). (Emphasis Added).

“It is never appropriate to rely solely on ‘common knowledge’ in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697. (Emphasis Added). As the court held in *Zurko*, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. *Id.* at 1385, 59 USPQ2d at 1697. See also *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002).” (MPEP § 2144.03(A)). “Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See *Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that ***general conclusions concerning what is “basic knowledge” or “common sense” to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection***). The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge. See *Soli*, 317 F.2d at 946, 37 USPQ at 801; *Chevenard*, 139 F.2d at 713, 60 USPQ at 241. The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.” (MPEP § 2144.03(B)). (Emphasis Added).

With respect to the subject Application, ***the Examiner has not properly Officially Noticed or not properly based the Official Notice on common knowledge.*** The Examiner's conclusory statement:

Official Notice is taken that ***content enhancement modules have been common knowledge in the electronic commerce art.*** To have provided such for Greef would have been obvious to one of ordinary skill in the art. It is noted that ***the rules***, as understood, enumerated by Applicant ***appear to have been common knowledge*** when viewing Greef. (28 April 2006 Office Action, Page 3). (Emphasis Added)

The above noticed Examiner's conclusory statement ***does not adequately address the issue that this statement is considered to be common knowledge or well-known in the art.*** The Applicants respectfully submit the following statement, to further explain why the Examiner's above noticed statement is not considered to be common knowledge or well-known in the art.

First, it is not clear what the Examiner means by "***content enhancement modules have been common knowledge in the electronic commerce art***" (i.e. what "***content enhancement modules***" is the Examiner referring to and to what extent does the Examiner purport these "***content enhancement modules***" to applies to the subject Application). In fact, the limitations recited in amended independent Claim 1 are directed to an "***electronic commerce system, comprising a content enhancement module***" operable to "***analyze product data stored in one or more seller databases using a set of rules***, the one or more seller databases associated with one or more sellers, the ***set of rules comprising generic rules*** applying to substantially all of the one or more seller databases that store product data". It is not clear how the Examiner's purported Official Notice relates to the "***electronic commerce system***" or how it relates to the "***content enhancement module***" or even how it relates to "***analyz[ing] product data stored in one or more seller databases using a set of rules***, the one or more seller databases associated with one or more sellers, the ***set of rules comprising generic rules*** applying to substantially all of the one or more seller databases that store product data".

Second, it is not clear what the Examiner means by “**the rules [...] appear to have been common knowledge**” (i.e. what “**rules**” is the Examiner referring to and how does it “**appear to have been common knowledge**” and how is this apparent appearance related to the subject Application). In fact, the limitations recited in amended independent Claim 1 are directed to a “**content enhancement module**” operable to apply “**a set of rules**” wherein the “**set of rules compris[e] generic rules**” which apply “to substantially all of the one or more seller databases that store product data”. It is simply not clear what the Examiner means by “**the rules [...] appear to have been common knowledge**” or even it is not clear what the Examiner is referring to. Thus, the Applicants respectfully submit that the equations forming the foundation of the Examiner’s comparison between the Examiner’s purported Official Notice and amended independent Claim 1 cannot be made.

Third, as explained above, the Examiner’s statement that “**content enhancement modules have been common knowledge in the electronic commerce art**” is not considered to be common knowledge or well-known in the art. The Applicants respectfully submit that there is simply no disclosure, teaching, or suggestion in *Greef* or the Examiner’s Official Notice to the contrary.

The Applicants respectfully submit that the Office Action provides no documentary evidence to support the Official Notice taken by the Examiner, yet the asserted facts are not capable of “instant and unquestionable” demonstration as being well-known. ***The Applicants respectfully request the Examiner to produce authority for the Examiner’s statement “that content enhancement modules have been common knowledge in the electronic commerce art”.*** (28 April 2006 Office Action, Page 3). (Emphasis Added).

The Applicants further respectfully submit that ***the Applicants have adequately traversed the Examiner’s assertion of Official Notice*** and direct the Examiner’s attention to the pertinent text of the MPEP, which states:

If applicant adequately traverses the examiner’s assertion of official notice, the examiner must provide documentary evidence in the next Office

action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (“[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings” to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). (MPEP § 2144.03(C)).

Thus, if the Examiner continues to maintain the rejection of Claims 1-11, 34, and 35 based on the Official Notice, ***the Applicants respectfully request that the Examiner provide documentary evidence as necessitated by MPEP § 2144.03(C)***. Furthermore, if the Examiner is relying on personal knowledge to support the finding of what is known in the art, ***the Applicants further request that the Examiner provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding as further necessitated by MPEP § 2144.03(C)***.

The Office Action has Failed to Properly Establish a *Prima Facie* case of Obvious over the Proposed *Greef-Official-Notice* Combination

The Applicants respectfully submit that the Office Action has failed to properly establish a *prima facie* case of obviousness based on the proposed combination of *Greef* or the Examiner's Official Notice, either individually or in combination. The Office Action has not shown the required teaching, suggestion, or motivation in these references or in knowledge generally available to those of ordinary skill in the art at the time of the invention to combine these references as proposed. The Office Action merely states that “it would have been obvious to one of ordinary skill in the art.” (28 April 2006 Office Action, Page 3). (Emphasis Added). The Applicants respectfully disagree.

The Applicants further respectfully submit that this purported advantage relied on by the Examiner is nowhere disclosed, taught, or suggested in *Greef* or the Examiner's Official Notice, either individually or in combination. The Examiner asserts that the motivation to combine the references as proposed would be because “***the rules*** [...] ***appear to have been common knowledge*** when viewing *Greef*.” (28 April 2006 Office

Action, Page 3). (Emphasis Added). The Applicants respectfully disagree and further respectfully request clarification as to how the Examiner arrives at this conclusion. For example, how does "**the rules [...] appear to have been common knowledge**" and to what extent does the Examiner purport that this apparent appearance applies to the subject Application. **The Applicants respectfully request the Examiner to point to the portions of Greef or Dietrich which contain the teaching, suggestion, or motivation to combine these references for the for the Examiner's stated purported advantage.** In particular, the Applicants respectfully request the Examiner to point to the portions of Greef or the Examiner's Official Notice which expressly state that "**the rules**" are in fact "**common knowledge**". The Applicants further respectfully submit that the Examiner is using the subject Application as a template to formulate reconstructive hindsight, which constitutes impermissible use of hindsight under 35 U.S.C. § 103(a).

A recent Federal Circuit case makes it crystal clear that, in an obviousness situation, the **prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art.** *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). (Emphasis Added). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35. With respect to the subject Application, the **Examiner has not adequately supported the selection and combination of Greef or the Examiner's Official Notice to render obvious the Applicants claimed invention.** The Examiner's conclusory statements that "it would have been obvious to one of ordinary skill in the art" and that "**the rules [...] appear to have been common knowledge** when viewing Greef", **does not adequately address the issue of motivation to combine.** (28 April 2006 Office Action, Page 3). (Emphasis Added). This factual question of motivation is material to patentability, and cannot be resolved on subjective belief and unknown authority. *Id.* It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Thus, **the Office Action fails to provide proper motivation for combining the teachings of Greef or the Examiner's Official Notice, either individually or in combination.**

The Proposed *Greef-Official-Notice* Combination is Improper Under MPEP § 706.02(j) For Applicants Dependent Claims 2-11

The Applicants respectfully submit that the rejection of Claims 2-11 is improper under 35 U.S.C. § 103(a) over *Greef* in view of the Examiner's Official Notice, because the Examiner's initial burden of proof has not been satisfied. In addition, the Applicants respectfully traverse the rejection of dependent Claims 2-11 because the Examiner has not properly complied with MPEP § 706.02(j).

After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:

(A) the relevant teachings of the prior art relied upon, preferably ***with reference to the relevant column or page number(s) and line number(s) where appropriate,***

(B) the difference or ***differences in the claim over the applied reference(s),***

(C) the ***proposed modification of the applied reference(s)*** necessary to arrive at the claimed subject matter, and

(D) an ***explanation why one of ordinary skill*** in the art at the time the invention was made ***would have been motivated to make the proposed modification.*** (MPEP § 706.02(j)). (Emphasis Added).

The Applicants further respectfully submit that ***the Examiner has not set forth:*** (1) the relevant teachings of *Greef* including any references to the relevant column and line numbers of *Greef*; (2) ***asserted any argument or remarks regarding the differences in the Applicants claims over Greef,*** (3) asserted any proposed modifications of *Greef* to arrive at the Applicants claimed invention; or (4) asserted any explanation why one of ordinary skill would have been motivated to make the proposed modifications.

In addition to failing to comply with the above MPEP requirements, ***the Examiner has also failed to establish a prima facie case of obviousness based on the three basic requirements set forth in MPEP § 706.02(j).*** First, there must be some suggestion or motivation, either in *Greef* or the Examiner's Official Notice, or in the knowledge generally available to one of ordinary skill in the art, to modify *Greef* and the Examiner's Official Notice. Second, there must be a reasonable expectation of

success. Finally, *Greef* and the Examiner's Official Notice, either individually or in combination, must teach or suggest all the Applicants claim limitations. ***The teaching or suggestion*** to make the *Greef* and the Examiner's Official Notice combination and the ***reasonable expectation of success must both be found in Greef or the Examiner's Official Notice and not based on Applicants disclosure.*** *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis Added).

The Applicants still further respectfully submit that the MPEP clearly states that the ***"initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done."*** (MPEP § 706.02(j)). (Emphasis Added). "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or ***the examiner must present a convincing line of reasoning*** as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). (Emphasis Added). In the subject Application, ***the Examiner has not shown the Applicants claimed invention to be expressly or impliedly suggested in the Greef or the Examiner's Official Notice nor has the Examiner presented a convincing line of reasoning, let alone any reasoning, why the artisan would have found the Applicants claimed invention to be obvious in view of Greef or the Examiner's Official Notice.*** In fact, ***the Examiner is silent as to any objection or rejection of dependent Claims 2-11.***

The MPEP further states that "it is important for an examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply." (MPEP § 706.02(j)). Thus, if the Examiner continues to maintain the rejection to dependent Claims 2-11 under 35 U.S.C. § 103(a) based on the proposed combination of *Greef* and the Examiner's Official Notice, the Applicants respectfully request that the Examiner provide a proper argument in support of the Examiner's rejection, as necessitated by MPEP § 706.02(j).

For at least the reasons set forth herein, the Applicants respectfully request that the rejection of dependent Claims 2-11 under 35 U.S.C. § 103(a) be reconsidered and that dependent Claims 2-11 be allowed.

The Applicants Claims are Patentable over the Proposed *Greef-Official-Notice* Combination

The Applicants respectfully submit that amended independent Claim 1 is considered patentably distinguishable over the proposed combination of *Greef* and the Examiner's Official Notice. This being the case, amended independent Claims 34 and 35 are also considered patentably distinguishable over the proposed combination of *Greef* and the Examiner's Official Notice.

With respect to dependent Claims 2-11 which depend from amended independent Claim 1. As mentioned above, each of amended independent Claims 1, 34, and 35 are considered patentably distinguishable over *Greef* and the Examiner's Official Notice. Thus, dependent Claims 2-11 are considered to be in condition for allowance for at least the reason of depending from an allowable claim.

For at least the reasons set forth herein, the Applicants respectfully submit that Claims 1-11, 34, and 35 are not rendered obvious by the proposed combination of *Greef* and the Examiner's Official Notice. The Applicants further respectfully submit that Claims 1-11, 34, and 35 are in condition for allowance. Thus, the Applicants respectfully request that the rejection of Claims 1-11, 34, and 35 under 35 U.S.C. § 103(a) be reconsidered and that Claims 1-11, 34, and 35 be allowed.

THE LEGAL STANDARD FOR OBVIOUSNESS REJECTIONS UNDER 35 U.S.C. § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, ***there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.*** Second, there must be a reasonable expectation of success. Finally, ***the prior art reference*** (or references when

combined) **must teach or suggest all the claim limitations**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, **and not based on applicant's disclosure**. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, **there must be something in the prior art as a whole to suggest the desirability**, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:

In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although the Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Commissioner to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

7/13/06
Date



James E. Walton, Registration No. 47,245
Steven J. Laureanti, Registration No. 50,274
Daren C. Davis, Registration No. 38,425
Alan Dawson Lightfoot, Registration No. 57,756
Michael Alford, Registration No. 48,707
Law Offices of James E. Walton, P.L.L.C.
1169 N. Burleson Blvd., Suite 107-328
Burleson, Texas 76028
(817) 447-9955 (voice)
(817) 447-9954 (facsimile)
steven@waltonpllc.com (e-mail)

CUSTOMER NO. 53184

ATTORNEYS AND AGENTS FOR APPLICANTS